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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/016,532

12/10/2001

George J. Picha

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06/02/2004

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EXAMINER

THANH, LOAN H

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/016,532

Applicant(s)

PICHA ET AL.

Examiner

LoAn H. Thanh

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3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10-15, 18-20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2, 4-6, 9 and 17 is/are allowed.
- 6) ☒ Claim(s) 1 and 3 is/are rejected.
- 7) ☒ Claim(s) 8 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Response to Amendment***

The specification objection and the claim rejection under 35 USC 112, 2<sup>nd</sup> paragraph have been obviated in view of the amendment filed 3/18/04.

### ***Election/Restrictions***

This application contains claims 7,10-15,18-20 drawn to an invention nonelected without traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (U.S. Patent No. 5,279,564)

Taylor discloses a device comprising a tubular portion , an internal bolster having a radial wing 12,22 and permitting a first and second orientation. And a constraining member 14 which encases the bolster. ( See figures 1-6.) Lacking any

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structurally distinguishing features, the Examiner is construing the tubular element of 14 to be a capsule.

Claims 1,3 are rejected under 35 U.S.C. 102(b) as being anticipated by Semrad (U.S. Patent No. 4,986,810)

Semrad discloses a device comprising a tubular portion , an internal bolster having a radial wing 14,15 and permitting a first and second orientation and further comprising a constraining member which encases the bolster. ( See figures 1-11). Lacking any structurally distinguishing features, the Examiner is construing the tubular element of 14 to be a capsule.

### ***Response to Arguments***

Applicant's arguments, see page 9-10, filed 03/18/04, with respect to claims 2, 16, 17 have been fully considered and are persuasive. The rejection of claims 2,16-17 has been withdrawn.

Applicant's arguments filed 03/18/04 have been fully considered but they are not persuasive with respect to pages 8-9 direct at the Taylor and Semrad references. First, with respect to the Taylor reference. Wrapped is broadly interpreted by the Examiner and the Microsoft Bookshelf basics - dictionary (copyrights 1987-1996 edition) supports "wrapped" to be " To arrange or fold (something) about as cover or protection ". Thus, the radial wing is wrapped into a generally cylindrical configuration. See figures 4-6 to see the first and second configuration.

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Secondly, with respect to the Semrad reference, the first configuration is shown when the constraining member is covering the tubular element and the internal bolster. The second configuration is shown when the constraining member is removed. Applicant is arguing functionally what has not been claimed. See figures 4, 9 –10.

### ***Allowable Subject Matter***

Claims 2,4-7,9, 17 are allowable since the prior art of record fails to teach or render obvious the limitations of which was argued by applicant. In particular , the prior art of record fails to teach the device in combination with all the structural and functional limitations and further failing to have a ripcord for tearing the constraining member and deploying the internal bolster.

Claims 8,16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not


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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (703) 305-0038. The examiner can normally be reached on Mon. - Fri. (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
LoAn H. Thanh  
Primary Examiner  
Art Unit 3763

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